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Written statement* submitted by Conseil International pour le soutien à des procès équitables et aux Droits de l'Homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Bahrain: Military Trial against Civilians

Introduction

It is well known and recognized that military courts are those which handle offences committed by military personnel and associated with their military functions, and this is how the military court was describe in the 2002 Constitution of the Kingdom of Bahrain, and particularly in section b of Article 105 thereof, which stipulates that,

"The jurisdiction of military courts shall be confined to military offences committed by members of the Defense Force, the National Guard, and the Security Forces. It does not extend to other persons except when martial law is declared and within the bounds prescribed by law."

However, the martial law declared on March 15, 2011 enabled the military court to try civilians over political cases and conducted the collective punishment against the opposition movement. The Bahrain Independent Commission of Inquiry (BICI) nullified legal effects of the sentences made by military courts under the martial law. The government of Bahrain reacted with an amendment of Article 105 of the Constitution on March 30 2017, lifting the constitutional impediment of trying civilians in military courts. This constitutional amendment resulted in an amendment to the Military Judiciary Law on April 18, 2017, which allows the military court to try civilians.

The Amendment of Constitution and Judiciary Law

The 2002 Constitution of Bahrain used to stipulate in its Article 105 that "the Jurisdiction of military courts shall be confined to military offences committed by members of the Defence Force, the National Guard, and the Security Forces. It does not extend to other persons except when martial law is declared and within the bounds prescribed by law." This article was, however, replaced on March 30 2017, and the text that prevents the trial of civilians by military courts was removed.

After 20 days, the Military Judiciary Law was also amended, and Law No. 12 of 2017 allows military courts have the jurisdiction to try civilians permanently, and all criminal lawsuits (which are based on political cases) that have not been referred to civil criminal courts are referred to military courts.

It is clear that the judicial procedures in the Bahraini military courts are not in conformity with this article, by which Bahrain is bound since it is a state party to this Covenant, especially with regard to the period of remand detention, which is not regulated by the Military Judiciary Law, and the access to a lawyer or communication with the outside world, whether with the family or the lawyer.

Moreover, Bahrain's judicial authority did not follow the Basic Principles relating to the Independence of the Judiciary adopted by the United Nations in 1985, neither in the appointment of judges nor in court proceedings.

The Military Trial of Civilians

Based on the amendment, the first military lawsuit resulted in charges of a number of victims, accused of establishing a terrorist cell, aimed at committing terrorist crimes against the Bahrain Defense Force. The first group of defendants whose cases were reviewed in the military court includes Sayed Alawi Hussein Alwi, Sayed Fadhel Sayed Abbas, Muhaomad Abdul Hussein Salah Al Shehabi, and Muhammad Abdul Hassan Ahmad Kadhemi al-Mutagawi, on 24 October 2017. Sayed Alawi Hussein Radhi, who is an engineer, was abducted by armed men and forcibly disappeared. During the detention period, he was not allowed to call his family for more than a month. Sayed Fadhel Sayed Abbas was detained by security forces since 28 September 2016, and was also forcibly disappeared.

It is no doubt that the constitutional amendment on the powers of the military judiciary approved by the King will lead to unrestrained issuing of arbitrary sentences by the military institution against prisoners of conscience. Military judiciary Law allows issuing the death penalty in thirty-three cases of crimes, whatever the crimes were intentional or unintentional.

On 25 December 2017, the Supreme Military Court issued a death sentence to 6 civilians, charging them for forming a terrorist cell. The victims, Mubarak Adel Mubarak Mahanna, Sayed Fadhel Abbas Hassan Radhi, Sayed Alawi Sayed Husain Alawi, Muhammad Abdulhassan Al Mutaghwi, Murtada Majeed Ramadan Alawi, and Habeeb Abdullah Hassan Ali, were given the verdicts after a mass unfair trial. Murtada Majeed and Habeeb Abdullah were tried in absentia.

Recommendations

To the government of Bahrain:

- Repeal the constitutional amendment and restore Article 105 of the Constitution to its previous state to ensure that civilians are not tried in military courts.
- Repeal Law No. 12 of 2017 amending the Military Judiciary Law, which allowed for the prosecution of civilians in military courts.
- Adopt the Basic Principles on the Independence of the Judiciary adopted by the United Nations in 1985.
- Open an independent investigation into all complaints of violations in this and other cases, particularly concerning complaints of torture and ill-treatment.

To the international community:

- The United Nations Secretary-General, the High Commissioner and Member States of the Human Rights Council urge the Government of Bahrain to adopt and implement the basic principles on the independence of the judges, to ensure that the Government of Bahrain refrains from trying civilians in military courts and amends the law.
- The Special Rapporteur on the Independence of Judges and Lawyers submits a request to visit Bahrain and the Bahraini authorities are preserved to accept the request for a visit.
- The mechanisms for the appointment of the Supreme Judicial Council are amended in order to allow the public to exercise its authority to supervise the work of the judiciary.
- Legislative guarantees are put in place so that none of the other authorities interfere in the work of the judiciary.